



ANALYSIS

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|--|---|
| 1. Short Title and Commencement | 11. Duty to deliver books and property to Administrator |
| 2. Interpretation | 12. Protection of Administrator |
| 3. Application of Act | 13. Expenses of Administrator |
| 4. Termination of the Trust | 14. Administrator to Report |
| 5. Administrator in respect of Assets | 15. Discharge of Administrator |
| 6. Vesting of Assets in Administrator | 16. Offence to destroy or alter records |
| 7. Duties and functions of Administrator | 17. Duty to report offences, etc |
| 8. Powers of Administrator | 18. Power to enter premises |
| 9. Court may confer additional powers on Administrator | 19. Compensation |
| 10. Application of proceeds of realisation | 20. Regulations |

1980-81, No. 21

An Act to make special provision for the termination of a specified Trust and to provide for the vesting of the property of the Trust in an Administrator for disposal, and for matters arising therefrom

(19 January 1981)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in session assembled, and by the authority of the same, as follows:

1. Short Title and Commencement - (1) This Act may be cited as the Medical Research Trust (Termination) Act 1980-81.

(2) This Act shall be deemed to have come into force on the 15th day of January 1981.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Administrator" means the Administrator appointed by the Attorney-General under Section 5 of this Act:

"Assets" includes real and personal property of any kind, and money held at any bank or elsewhere:

"Assets of the Trust" means the assets belonging to or in the name of the Medical Research Trust of the Cook Islands and shall be deemed to include any assets belonging to or in the name of Vlastimil Milan Brych arising out of the work of the Trust:

"Chief Justice" means the Chief Justice of the High Court of the Cook Islands:

"The Court" means the High Court of the Cook Islands:

"The Constitution" means the Constitution of the Cook Islands:

"The Trust" means the Medical Research Trust of the Cook Islands.

3. Application of Act - This Act shall apply to the Medical Research Trust of the Cook Islands.

4. Termination of the Trust - The Trust is hereby terminated.

5. Administrator in respect of Assets - There shall be an Administrator of the assets of the Trust, appointed by the Attorney-General.

6. Vesting of assets in Administrator - (1) On the commencement of this Act all assets of the Trust shall be, and the same are hereby vested, without conveyance or assignment, in the Administrator.

(2) On the vesting under subsection (1) of this Section of the assets of the Trust, the Administrator shall take all property free from any encumbrance existing at the commencement of this Act.

7. Duties and functions of Administrator - In the exercise in relation to the assets of the Trust of the powers and functions of the Administrator it shall be the duty of the Administrator to take possession of and protect and preserve those assets, to hold them for the benefit of creditors, to manage them, to realise them, to hold the proceeds on trust, and to apply the same in accordance with section 10 of this Act.

8. Powers of Administrator (1) The Administrator of the Trust shall have the following powers:

- (a) To take and retain possession of all assets of the Trust whatsoever and wheresoever situated, or held by or vested in any receiver under any debenture, and in particular, but without limiting the generality of the power conferred by this paragraph, to demand, receive, and hold all scrip, share certificates, or other instruments of title to property of the Trust (whether registered in the name of the Trust or not) which is or may be in the hands of the any person or corporation, whether or not employed by the Trust, with all related documents, records, and lists of such instruments:
- (b) To demand and receive all money payable to the Trust or held by or vested in any receiver under any debenture; and to take over bank accounts of the Trust:
- (c) To sell the whole or any part of the assets of the Trust by public auction or public tender on such terms and conditions as he thinks fit, with power to buy in at any auction or to rescind or vary any contract for sale on such terms as he thinks fit, and with power also to sell the whole thereof to any person or to sell the same in parcels and in any order:

- (d) To let or grant a lease of any assets of the Trust, and to take a lease or tenancy of any property required by the Administrator:
- (e) To repair and insure against any damage, whether by fire or earthquake or accident or otherwise, any assets of the Trust, and to insure against any other risk or liability against which the Administrator considers it prudent to insure:
- (f) To pay all rates, taxes, insurance premiums, or other outgoings payable in respect of the assets of the Trust or under any policy of insurance of any kind:
- (g) To apply money forming part of the assets of the Trust, whether arising from real or personal property and whether income or capital, in or towards the payment of any debts, obligations, or liabilities incurred by the Administrator in the exercise of his powers as such:
- (h) To borrow, on the security of any assets of the Trust, any money that may be required for the purposes of the administration of the assets of the Trust:
- (i) To cause to be brought to the Cook Islands any books, records, vouchers, securities, instruments of title, or any other movable property of the Trust held out of the Cook Islands:
- (j) To carry on the business of the trust so far as may be necessary or expedient for the beneficial disposal of the same, and for that purpose to employ such person or persons as he thinks fit:
- (k) To grant powers of attorney to any person in or out of the Cook Islands to do any act or thing with respect to the assets or affairs of the Trust that the Administrator could personally do by virtue of this Act:
- (l) To consult and employ counsel, solicitors, accountants, sharebrokers, and other persons.

(2) In addition to the powers given by subsection (1) of this section, but subject to the provisions of this Act, the Administrator may sell by private contract -

- (a) Any perishable property:
- (b) Any property offered for sale by public auction or public tender and not sold:
- (c) Any property that, by reason of its nature, situation, value, or other special circumstances, he considers it unnecessary or inadvisable to sell by public auction or public tender:

(3) Before exercising any of the powers conferred by the foregoing provisions of this Section, the Administrator may in his discretion apply to the Court ex parte for directions with respect to the exercise of those powers, and the Court may, on any such application, make such order declaring the rights of persons before the court or otherwise, as the Court thinks just.

9. Court may confer additional powers on Administrator - In addition to the powers conferred on the Administrator by or under section 8 of this Act, the Administrator shall have, in relation to the assets of the Trust, such further powers (if any) as the Court, on application by the Administrator in that behalf, may confer.

10. Application of proceeds of realisation - (1) All money received by the Administrator of the assets of the Trust, shall be paid by him as soon as practicable into a trust account established by him at a bank, and shall notwithstanding anything contained in any deed relating to the Trust, be applied:

- (a) First, in payment of all costs, charges, and expenses (including business) incurred by the Administrator and payable under section 13 of this Act.

- (b) Second, in payment of secured debts in accordance with such order or orders as the Court may make in that behalf.

(2) The balance of the proceeds of the trust account established under subsection (1) of this section shall be applied towards the cost of constructing an interdenominational Chapel at the Hospital at Rarotonga and the disbursement of the funds for that purpose shall be under the supervision of the Financial Secretary.

(3) Any surplus funds may be paid to such medical organisation as the Court on the application of the Administrator may direct.

11. Duty to deliver books and property to Administrator -

(1) It shall be the duty of all persons having possession and control of any books or records or documents or deeds or other property, whatsoever and wheresoever situated, belonging to the Trust, forthwith after the commencement of this Act, to deliver or yield up possession of all such books, records, documents, or other property as aforesaid to the Administrator.

(2) If any person fails within 14 days to comply with the requirements of subsection (1) of this section, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding \$200, and to a further fine not exceeding \$20 for every day during which the offence has continued.

(3) If any person fails to comply with the requirements of subsection (1) of this section, the Administrator may at any time certify the failure to the Court (whether or not an offence has been committed under subsection (2) of this section), and the Court may thereupon inquire into the matter of the failure and, after hearing any witnesses who may be produced against or by or on behalf of the alleged offender, and after hearing any statement that may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) It shall be no defence to any proceedings under this section that the person in possession or control of any property as aforesaid is or was a trustee of the property for the Trust or entitled to a lien or other charge over that property, or was a receiver or manager of the property appointed under Part VII of the Companies Act 1955.

12. Protection of Administrator - (1) For the purpose of this Act the Administrator of the assets of the Trust shall be deemed to be an officer of the Court, and in the exercise of his powers and functions under this Act shall have all the privileges and be entitled to the same protection as if he had been appointed by the Court.

(2) The Administrator shall not be liable for any acts done by him in good faith in the exercise of his powers and functions as trustee, and he shall be indemnified out of the assets of the Trust in respect of all liabilities properly incurred.

(3) Subject to Article 40 of the Constitution no action or proceeding shall be proceeded with or commenced against the Trust or against the Administrator except by leave of the Court and subject to such terms as the Court may impose.

13. Expenses of administration - All costs, charges, and expenses properly incurred by the Administrator of the assets of the Trust in the exercise of his powers and functions under this Act in relation to the Trust (including such fees, commission, or other remuneration as may be approved by the Court in respect of the services of the Administrator) shall be payable out of the assets of the Trust in priority to all other claims.

14. Administrator to report - (1) As soon as practicable after the date of the commencement of this Act, the Administrator shall report to the Chief Justice on the affairs of the Trust showing as at that date the particulars of the assets, debts, and liabilities of the Trust, and such further or other information as the Administration thinks fit or the Chief Justice requires, and a copy of the report shall be furnished to the office of the Attorney-General.

(2) The statement of affairs shall be accompanied by any comments that the Administrator sees fit to make thereon.

(3) At the end of each 30 day period after the first report is made, the Administrator shall report to the Chief Justice on the financial affairs of the Trust and his management thereof.

(4) In each period of 12 months and within one month after his discharge under section 15 of this Act the Administrator shall submit to the Chief Justice a statement of accounts, duly audited, showing in detail his receipts and payments in respect of the Trust.

15. Discharge of Administrator - When the realisation of the assets of the Trust has been completed, and all money received by the Administrator has been distributed in accordance with this Act, the Administrator may be discharged by the Attorney-General.

16. Offence to destroy or alter records - (1) If any former director, or any director, or any officer, trustee, servant, or agent of the Trust, or any other person, -

(a) With intent to defeat the purposes of this Act, destroys or alters any book, document, deed or record of or relating to the Trust, or sends or attempts to send or conspires with any other person to send out of the Cook Islands any such book, document, or record or any property of any description belonging to or in the disposition or under the control of the Trust or forming part of the assets of the Trust immediately before the commencement of this Act; or

(b) Fails or refuses to answer to the best of his knowledge and ability any question that he may be asked by the Administrator in relation to any such book or document or record or property, or wilfully gives a false answer to any such question, - he commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or both.

(2) If in any prosecution for an offence alleged to have been committed against this section it is proved that the person charged with the offence has destroyed or altered any book, document, deed or record as aforesaid, or has sent or attempted to send or conspired to send out of the Cook Islands any such book, document, or record, or any other thing, the onus of proving that in so doing he had not acted in contravention of this section shall lie on him.

17. Duty to report offences, etc. - If it appears to the Administrator of the Trust that any person has been guilty of any offence against this Act, or of a breach of trust or any other offence in relation to the Trust, he shall report the matter to the Solicitor-General.

18. Power to enter premises - (1) The Administrator and any Constable called upon by the Administrator to assist him may at any time enter any place or premises for the purposes of carrying out the duties and functions imposed upon him under this Act.

(2) Any person who obstructs the Administrator in any way in the execution of his duties, either directly or indirectly, commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$1,000, or both.

19. Compensation - In the event of any person claiming an entitlement to compensation as a result of the coming into force of this Act, then: -

(1) Such person may apply to the Court for the determination of his interest, and for an order as to the amount of compensation to be paid.

(2) Any party to proceedings in the Court relating to such a claim shall have the same rights of appeal as are accorded generally to parties in civil proceedings in that Court sitting as a Court of original jurisdiction.

(3) Any compensation payable under this section shall be paid within such period as the Court may direct, and in any case not later than 30 days after the making of an order.

20. Regulations - (1) The High Commissioner may from time to time, by Order in Executive Council, make all such regulations as may, in his opinion, be deemed necessary or expedient from giving full effect to the provisions of this Act and for the due administration hereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within 28 days after the date of the making thereof if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within 28 days after the date of the commencement of the next ensuing session.

This Act is administered in the Crown Law Office